IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 450 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVRAJBHAI HARJIBHAI JALODRA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR YM THAKKAR for Petitioner

MR HS MUNSHAW for Respondent No. 1, 4

Ms.KATHA GAJJAR, A.G.P. for Respondent No. 2

MR GM JOSHI for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 27/11/2000

ORAL JUDGEMENT

1. In response to the notice of this petition Shri H.S.Munshaw appeared for respondents No.1 & 4, Shri

G.M.Joshi, for respondent No.3 and Ms.Katha Gajjar, A.G.P. for Respondent No.2. Having heard the learned Counsel for the petitioner and the above respondents this petition can be finally disposed of at the admission stage.

2. Brief facts giving rise to this petition are as under :

Plot Nos.1 & 2 of Survey No.252 of Damnagar village were purchased by the petitioner on 17.12.1986 and since then he is in possession of the same. After obtaining necessary permission to construct building from the appropriate Authority the petitioner constructed two floors on the above land. The permission was for constructing residential building. The petitioner also started Diamond cutting factory on the ground floor of plot Nos.1 & 2 in 1988. The appropriate Authority commenced summary eviction proceeding against the petitioner for breach of conditions contained in declaration form. On 11.7.1988 the respondent No.1 passed an order directing demolition of the aforesaid premises for breach of conditions. Feeling aggrieved the petitioner moved this Court by filing Special Civil Application No. 5834 of 1988 in which the orderof the respondent No.1 for demolition was stayed. With a view to raise the the construction over the first floor of existing building the petitioner filed Civil Application No.1048 of 1993 in this Court and raised construction over the first floor. In the mean time the petitioner applied to the respondent No.1 for change of user of land from residential to non-residential purpose in the year 1989. The said application was rejected on 7.4.1995 hence the revision was filed before the respondent No.2. The revision application of the petitioner was partly allowed on 26.9.1995 and the respondent No.1 was directed to take fresh decision after ascertaining whether other Diamond cutting factories are running in the neighbourhood of the premises of the petitioner. Thereafter the petitioner again approached the respondent No.1 for obtaining the requisite permission for change of user which was rejected by the respondent No.1 on 6.4.1996. Again revision was preferred against this order and the matter was remanded to the respondent No.1 who was directed to take same decision in all identical matters. The petitioner again approached the District Development Officer for permission of change of user, but his application was again rejected on 10.9.1997. Another revision was preferred before the respondent No.2 which was rejected on 10.9.1997.

3. The grievance of the petitioneris that the Addl. Chief Secretary, respondent No.2, had rejected the revision application solely on the ground that the Special Civil Application No.5834 of 1988 and Misc. Civil Application No.79 of 1996 were pending before the High Court. According to the petitioner Misc. Civil Application No.79 of 1996 was withdrawn in the year 1996 hence it was wrongly observed by the Addl. Chief Secretary that this matter was also pending before the High Court. According to the petitioner the pendency of Special Civil Application No.5834 of 1988 could not be a ground for rejection of petitioner's representation by the respondent No.2. Consequently the order dated 22.9.1998 of respondent No.2 is under challenge in this petition.

4. In the course of argument Shri Thakkar has drawn my attention to the fact that after filing of this petition earlier Special Civil Application No.5834 of 1988 was decided by this Court on 25.4.2000 and as such this ground also becomes non-existence hence the impugned order dated 22.9.1998 of the respondent No.1 cannot be sustained. He suggested that this Court may issue direction to the respondent No.2 by remanding revision Application No.11 of 1997 to decide it in accordance with law uninfluenced by so called pendency or decision of the Special Civil Application No.5834 of 1988. The request appears to be reasonable. The grounds on which the revision was rejected by the respondent No.2, on the facts and circumstances mentioned above, have become non-existent and as such the said order has to be quashed.

5. In the result the writ petition succeeds and is hereby allowed. The impugned order of the respondent No.2 dated 22.9.1998 passed in Revision Application No.11/97 is quashed. The Revision Application No.11 of 1997 is remanded to the respondent No.2 with direction that the said revision shall be disposed of expeditiously, preferrably within six months, in accordance with law after hearing all the parties concerned. No order as to costs.

sd/-

Date : November 27, 2000 (D. C. Srivastava, J.)

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